IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 43 of 1992
with
INCOME TAX REFERENCE No 416 & 416A of 1992
with
INCOME TAX REFERENCE No 111 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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COMMISSIONER OF INCOME TAX

Versus

SUNISHA SIDHARTH FAMILY TRUST

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Appearance:

1. INCOME TAX REFERENCE No. 43 of 1992
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 17/07/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE K.A.PUJ)

Since common question is involved in these three references, the same are disposed of by this common judgment.

2. ITR No.43 of 1992 is in respect of assessment year 1981-82 and the following question of law is referred for the opinion of this Court at the instance of the revenue.

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee trust is a specific trust and to tax the same at normal rate?

3. Though there is slight variation in framing of the question in ITR Nos.416 & 416A of 1992 which are for assessment years 1980-81 and 1982-83 and in ITR No.111 of 1993 which is in respect of assessment year 1985-86, the controversy involved in all the three references is the same.

4. While drawing the statement of case for assessment year 1981-82, the Tribunal has observed that the assessee's case before the Income-tax Officer was that the assessee was a specific trust and as such, assessment should be made in accordance with the provisions of Section 161(1) of the Act. The ITO further held that the assessee was a discretionary trust and accordingly the assessee was liable to be taxed at the maximum marginal rate.

Being aggrieved of the said order, the assessee has preferred an appeal before the Appellate Assistant Commissioner and relying on the order of the Tribunal in assessee's own case for assessment years 1976-77 and 1977-78 in ITA Nos.2153 and 2154/Ahd/1980 dated 22-8-1981, the Appellate Assistant Commissioner directed the ITO to treat the assessee as specific trust and tax the income at normal rate applicable to specific trust.

Being aggrieved by the said order, the department filed an appeal before the Tribunal and relying on its earlier decision, the Tribunal has confirmed the view taken by the Appellate Assistant Commissioner.

5. The earlier order of the Tribunal has given rise

to Income-tax Reference No.131 of 1984 which was decided by this Court on 11-11-1998. In that case, the order of the Commissioner passed under Section 263 was challenged by the assessee before the Tribunal and the Tribunal has set aside the said order and restored the order of the Income-tax Officer wherein the ITO has taken the view that the assessee was a specific trust and the income was liable to be taxed at the normal rate as applicable to the specific trust. Since the order passed by the ITO for assessment years 1976-77 and 1977-78 was upheld by this Court in the above reference, we are of the view that the assessee is a specific trust and income of the assessee trust is liable to be taxed at the normal rate as it is applicable to specific trust.

We, therefore, answer the questions referred to us in all these references in the affirmative i.e. in favour of the assessee and against the revenue.

6. All the references are accordingly disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

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